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March 1, 1999

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Hand Delivery

Magalie Román Salas, Secretary
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

NEW YORK OFFICE
575 MADISON AVENUE
NEW YORK, NY 10022-2585

NEW JERSEY OFFICE
ONE GATEWAY CENTER
NEWARK, NJ 07102-5397

Re: **MM Docket No. 98-204**
Review of Broadcast and Cable
Equal Employment Opportunity Rules and Policies

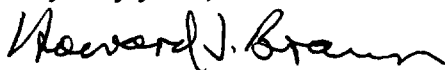
HOWARD J. BRAUN

Dear Ms. Salas:

On behalf of our clients, CAMRORY BROADCASTING, INC., CHAMBERS COMMUNICATIONS CORP., JAMES CHLADEK, CONTINENTAL BROADCASTING, INC., PALM BEACH RADIO BROADCASTING, INC., PRIME TIME CHRISTIAN BROADCASTING, INC., RADIO 95, INC., and SHOCKLEY COMMUNICATIONS CORPORATION ("Eight Broadcast/Cable Commenters"), licensees or operators of AM, FM, and television stations and cable television systems in California, Florida, Idaho, Iowa, Minnesota, New Jersey, New Mexico, New York, Oregon, Texas, Wisconsin, and the U.S. Virgin Islands, transmitted herewith for filing are an original and nine (9) copies of their "Comments" in response to the Notice of Proposed Rule Making and Order in the above-referenced Docket.

Please direct any communications or inquiries concerning this matter to the undersigned.

Very truly yours,



Howard J. Braun
Jerold L. Jacobs

Enc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Review of the Commission's) MM Docket No. 98-204
Broadcast and Cable)
Equal Employment Opportunity)
Rules and Policies)
and)
Termination of the) MM Docket No. 96-16
EEO Streamlining Proceeding)

TO: The Commission

**COMMENTS OF CAMRORY BROADCASTING, INC., CHAMBERS
COMMUNICATIONS CORP., JAMES CHLADEK, CONTINENTAL
BROADCASTING, INC., PALM BEACH RADIO BROADCASTING, INC.,
PRIME TIME CHRISTIAN BROADCASTING, INC., RADIO 95, INC.,
and SHOCKLEY COMMUNICATIONS CORPORATION**

CAMRORY BROADCASTING, INC., CHAMBERS COMMUNICATIONS CORP.,
JAMES CHLADEK, CONTINENTAL BROADCASTING, INC., PALM BEACH RADIO
BROADCASTING, INC., PRIME TIME CHRISTIAN BROADCASTING, INC., RADIO 95,
INC., and SHOCKLEY COMMUNICATIONS CORPORATION ("Eight Broadcast/Cable
Commenters"), licensees or operators of AM,¹ FM,² and television³ stations and cable television

¹ Stations WXMC, Parsippany-Troy Hills, New Jersey; KDAL, Duluth, Minnesota; and WDSM and KXTP, both Superior, Wisconsin.

² Stations KZAT-FM, Belle Plaine, Iowa; WPBZ, Indiantown, Florida; WMBX, Jensen Beach, Florida; WBLK, DePew, New York; WJKC-FM, St. Croix, Virgin Islands; KDAL-FM and KTCO, both Duluth, Minnesota; and KRBR-FM, Superior, Wisconsin.

³ Stations KEZI-TV, Eugene, Oregon; KDRV, Medford, Oregon; KDKF, Klamath Falls, Oregon; KPRV, Roswell, New Mexico; KPTB, Lubbock, Texas; KMLM, Odessa, Texas; KPCB, Snyder, Texas; WKOW-TV, Madison, Wisconsin; WAOW-TV, Wausau, Wisconsin; WXOW-TV, LaCrosse, Wisconsin; WQOW-TV, Eau Claire, Wisconsin; WYOW, Eagle River, Wisconsin; and KXLT-TV, Rochester, Minnesota.

systems⁴ in California, Florida, Idaho, Iowa, Minnesota, New Jersey, New Mexico, New York, Oregon, Texas, Wisconsin, and the U.S. Virgin Islands, by their attorneys, hereby comment on the principal issues raised in the Notice of Proposed Rule Making in MM Docket No. 98-204 ("NPRM"), FCC 98-305, released November 20, 1998.

I. Introduction

1. As veteran radio and television broadcasters and/or cable system operators, the Eight Broadcast/Cable Commenters have conducted business under the Commission's broadcast and cable EEO rules for more than a generation. Even apart from the dictates of Lutheran Church – Missouri Synod v. FCC, 141 F.3d 344 (D.C. Cir. 1998), the passage of time and the accumulation of a wealth of practical experience make it both timely and appropriate for the Commission to reexamine and update its industry EEO programs. Generally, the Eight Broadcast/Cable Commenters fully endorse the EEO program modifications proposed in the NPRM. However, they do not support all of the Commission's recommended rule changes and rationale. What follows are the Eight Broadcast/Cable Commenters' specific views on key aspects of the NPRM.

⁴ Chambers Cable of Oregon, Inc., Chambers Cable of Payette, Inc., Chambers Cable of Southern California, Chambers Cable of Sunriver, Inc., Edmonds Cable Co., and Novato Cable Co. serve numerous cable communities in Oregon, Idaho, and California.

II. FCC Should Modify the Cable EEO Rules to Conform with its Revised Broadcast Rules

2. As proposed in Paragraphs 51-52 of the NPRM, the Eight Broadcast/Cable Commenters favor modifying the cable EEO rules to conform with the Commission's revised broadcast EEO rules. Such conformity will eliminate confusion between two different sets of requirements and will ensure that both sets of EEO rules conform to the constitutional guidelines set forth in the Lutheran Church case. Specifically, the Eight Broadcast/Cable Commenters support the modifications to paragraphs (b), (c), and (f) of Section 76.75 of the cable EEO rules, which concern recruitment, recordkeeping, and self-assessment. The changes in both the cable and broadcast EEO rules remove all requirements that broadcast licensees and cable operators compare their employment profile or employee turnover with the local labor force. In addition, the Commission will no longer compare individual broadcast licensees' or cable entities' employment profiles with the local labor force, even as a screening device.

III. FCC Should Adopt Broader Outreach Requirements in Lieu of Hiring Quotas

3. The Eight Broadcast/Cable Commenters welcome the Commission's proposal (NPRM ¶53) to clearly describe what records of EEO efforts must be kept and to detail how an entity should analyze its actual EEO program ("self-assessment"). These clarifications resolve previous uncertainties about important issues of EEO compliance and enforcement. Most importantly, the Eight Broadcast/Cable Commenters support the adoption of new outreach requirements (NPRM ¶61), which will require cable and broadcast entities to make increased efforts to inform all potential applicants, including minorities and women, of vacancies. However, the final rule(s) should be carefully crafted so as not to pressure or encourage broadcasters or cable operators to adopt racial preferences in hiring. Moreover, the Eight Broadcast/Cable Commenters believe that it would be onerous and impermissibly intrusive to

require local broadcasters and cable operators to extend their outreach efforts beyond their local market area or to require (as NPRM ¶65 intimates) that they recruit for vacancies by using a set minimum number of recruiting sources (e.g., six).

4. On the other hand, the Eight Broadcast/Cable Commenters fully support the Commission's proposals: not to consider jobs filled by internal promotion as a vacancy for which recruitment would be necessary (NPRM ¶67); to exempt a broadcaster or cable entity from filing EEO information with respect to minorities when minority group representation in its metropolitan statistical area or county constitutes less than five percent in the aggregate (NPRM ¶68); and to eliminate the requirement that broadcast licensees report part-time employees on the Broadcast Station Annual Employment Report (FCC Form 395-B)(NPRM ¶77).

IV. FCC Should Increase its Small Station EEO Exemption

5. The Eight Broadcast/Cable Commenters concur with the Commission (NPRM ¶84) that it should increase the size of broadcast stations that are relieved from EEO reporting and recordkeeping requirements from 5 to 10 or fewer full-time employees. Importantly, this rule change would not relieve any station from compliance with the Commission's anti-discrimination rule and new EEO outreach requirements. Rather, it would simply relieve small stations from the administrative burdens entailed in reporting and recordkeeping concerning their efforts. The Eight Broadcast/Cable Commenters agree (NPRM ¶85) that qualifying stations should simply be required to file the first page of FCC Form 395-B and Form 396-A, and the first two pages of Form 396, certifying that they qualify for relief. Exempt stations may complete the reporting forms on a strictly voluntary basis to assist the Commission in monitoring employment trends in the broadcast industry as a whole.

6. In the same vein, the Eight Broadcast/Cable Commenters recommend that the Commission should also establish a minimum market size for EEO reporting and recordkeeping as another way of recognizing the smallness of certain broadcast operations and providing appropriate administrative relief. They recommend that the cutoff be established at TV Designated Market Area (“DMA”) #150 – the Odessa-Midland, Texas TV market – which has 133,740 TV households (1998 Nielsen Media Research), and the equivalent size radio market. Then, only broadcast stations that have more than 10 full-time employees and are located in larger markets than DMA #150 would be required to comply with the Commission’s EEO reporting and recordkeeping rules. However, the Eight Broadcast/Cable Commenters agree with the Commission (NPRM ¶86) that Section 334(a) of the Communications Act of 1934, as amended, 47 U.S.C. §334(a) (“the Act”), prevents the Commission from changing the exemption level and reporting requirements for TV stations at the present time. Thus, the Commission’s proposed administrative relief from EEO reporting and recordkeeping requirements will apply only to radio stations.

**V. A Nexus Does Not Exist Between
Employees and Program Diversity**

7. In Paragraph 45 of the NPRM, the Commission invites comment as to: (a) whether there is a nexus between minority and female employment and diverse programming; and (b) how employees in various positions exert influence on program formats and other programming decisions. The Eight Broadcast/Cable Commenters reject the Commission’s tentative conclusions in Paragraphs 43-45 of the NPRM that: (i) there is a nexus between minority and female employment and diverse programming; (ii) employees in lower-level positions at broadcast stations can and do exert significant influence on programming decisions; and (iii) such connections between individual influence and programming decisions must be shown in order to constitutionally justify the Commission’s broadcast and cable EEO programs. Rather,

business reality clearly demonstrates that program formats are almost always selected based on audience demographics, not employee preferences, and that those same demographics also affect hiring decisions, at least where on-air personalities are involved.

8. In other words, the Eight Broadcast/Cable Commenters urge that most employees do not shape station formats and that most format decisions are determined by economic factors, not by the race or gender of the decisionmakers. Of course, this is not to say that station owners who are minorities or females may not dictate a program format that differs from the station's present audience demographics in the hope of attracting new audiences, or that the race or gender of a station employee – high or lower level – may not help shape a station's non-entertainment programming. Thus, since news and public affairs programming is a very important public interest component of overall station operations, diverse employment may well contribute to a Commission-favored diversity of viewpoint at least as to non-entertainment programming.

9. Importantly, the Eight Broadcast/Cable Commenters readily concede that minority managers managing minority-owned stations (for example, an Hispanic-owned, Spanish-language radio station) are much more attuned to the Hispanic community than are general market stations. But, in a cause-and-effect analysis, they believe that such Spanish-language formats are selected by owners and top management, based on demographics and proposed target audiences, before employees are hired, not vice-versa. Similarly, the Eight Broadcast/Cable Commenters believe that females in management positions at radio and TV stations are less concerned about programming specifically targeted for female audiences than they are about serving the community as a whole and gaining the highest possible audience ratings, regardless of male or female outlook or emphasis.

10. In sum, the Eight Broadcast/Cable Commenters support program diversity and the hiring of minorities and females as independent and worthy public interest values, which are

properly fostered by the Commission's broadcast and cable EEO rules without a showing of nexus between employees and diversity in programming.

VI. Religious Broadcasters May Establish Religious Belief or Affiliation as an Employee Occupational Qualification

11. The Eight Broadcast/Cable Commenters also support the Commission's proposal (NPRM ¶¶ 70-71) to codify its ruling in Streamlining Broadcast EEO Rule and Policies, 13 FCC Rcd 6322 (1998), that religious broadcaster licensees and permittees may establish religious belief or affiliation as a bona fide occupational qualification for their radio station employees. TV licensees and permittees may follow the same policy in reliance on the Commission's Streamlining decision. However, they agree with the Commission that, due to limitations imposed by Section 334 of the Act, the TV rules cannot be formally amended at this time to incorporate the policy. As to any employment position for which religious belief is not made a qualifications requirement, the Eight Broadcast/Cable Commenters concur with the Commission that licensees should still be required to fill that position pursuant to recruitment requirements applicable to all broadcasters, and, as to all vacancies, religious broadcasters will still be required to make hiring decisions without discrimination on the basis of race, color, national origin or gender (NPRM ¶71).

VII. FCC May Continue to Require Filing of Annual Employment Reports

12. Finally, the Eight Broadcast/Cable Commenters agree with the Commission (NPRM ¶47) that the Lutheran Church decision does not eliminate the Commission's authority to require broadcasters and cable entities to submit minority and female employment information to enable the Commission to monitor industry employment trends. However, their support is predicated on the Commission's assurance (NPRM ¶49) that the information collected will not be used for

screening or assessing compliance with EEO outreach requirements, which the Court found in Lutheran Church impermissibly pressures broadcasters to adopt racial preferences in hiring.

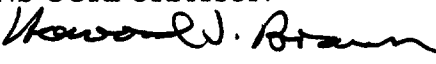
VIII. Conclusion

13. The Eight Broadcast/Cable Commenters believe that the NPRM represents a legally and pragmatically sound effort by the Commission to revise its broadcast and cable EEO requirements to comport with the constitutional restraints enunciated in the Lutheran Church case. Speedy adoption of an implementing Report and Order is urged.

WHEREFORE, in light of the foregoing, the Eight Broadcast/Cable Commenters respectfully request that the Commission should modify its broadcast and cable EEO rules in accordance with the above Comments.

Respectfully submitted,

CAMRORY BROADCASTING, INC.,
CHAMBERS COMMUNICATIONS CORP.,
JAMES CHLADEK, CONTINENTAL BROADCASTING, INC., PALM BEACH RADIO BROADCASTING, INC., PRIME TIME CHRISTIAN BROADCASTING, INC., RADIO 95, INC., and SHOCKLEY COMMUNICATIONS CORPORATION

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Dated: March 1, 1999